

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MICHAEL FREDRIC MORA,

Plaintiff,

vs.

CV F 05 0630 OWW WMW P

FINDING AND RECOMMENDATION

JEANNE WOODFORD, et al.,

Defendants.

Plaintiff is a state prisoner proceeding pro se. Pending before the court is Plaintiff's motion to voluntarily dismiss this action.

Attached to Plaintiff's motion is a new civil complaint. Plaintiff indicates that he "would like to voluntarily withdraw from this complaint to submit a new complaint entitled Michael Fredric Mora v. Law Offices of Wolff, Kinsler, and Sittig, et al.," Plaintiff may voluntarily dismiss this case without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(i), so long as a responsive pleading has not been filed. There has been no service of process, and no responsive pleading has been filed.

Plaintiff is advised that he will incur a liability of \$350 for the filing fee of the new action. The court will direct the California Department of Corrections to collect and forward to the court the filing fee. Should Plaintiff desire to proceed with this (2005) action, he should file objections to the findings and recommendations. Should Plaintiff fail to file

1 objections, the court will submit the recommendation of dismissal without prejudice to the
2 District Court, and will direct the Clerk of Court to file the complaint sent to the court on
3 February 1, 2007.

4 Accordingly, IT IS HEREBY RECOMMENDED that this action be dismissed
5 without prejudice on Plaintiff's motion.

6 These findings and recommendations are submitted to the United States District
7 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636 (b)(1)(B). Within
8 thirty days after being served with these findings and recommendations, Plaintiff may file
9 written objections with the court. Such a document should be captioned "Objections to
10 Magistrate Judge's Findings and Recommendations." Plaintiff is advised that failure to file
11 objections within the specified time may waive the right to appeal the District Court's order.
12 Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

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16 IT IS SO ORDERED.

17 **Dated: February 7, 2007**
18 mmkd34

/s/ William M. Wunderlich
UNITED STATES MAGISTRATE JUDGE